DAYATATTWA

OF

RAGHUNANDANA.

TRANSLATED BY

GOLAP CHANDRA SARKAR, SASTRI, M.A., B.L.,

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TO

THE HON'BLE LOUIS STUART JACKSON,

ONE OF THE JUDGES OF HER MAJESTY'S HIGH COURT
OF JUDICATURE AT FORT WILLIAM IN BENGAL,

THIS TRANSLATION OF THE DAYATATTWA OF RAGHUNANDANA,

IS DEDICATED

AS A SMALL TRIBUTE OF RESPECT FOR HIS
PROFOUND KNOWLEDGE OF THE
LAWS, MANNERS AND CUSTOMS
OF THE HINDUS.

PREFACE.

MOST of the principal treatises on Hindu Law, have been rendered into English, and the usefulness of these translations has been universally felt and acknowledged. The Dayatattwa has always been regarded as an authority of considerable importance. It is a compendium of the Dayabhaga; but there are places in which the author of the Dayatattwa differs from the doctrines of Jimutavahana. It is one of the twenty eight Chapters of the Smrititattwa, the work of Raghunandana Bhattacharya. The Dayatattwa forms the chapter on the Law of Inheritance as prevalent in Bengal, and is the most important portion of the work. The reputation of Raghunandana as an authority is very great in Bengal. He is emphatically called the "Smarta Bhattacharya" or the Learned Professor of Law. In speaking of him Colebrooke says :—"The Bengal school "alone having taken for its guide Jimutavahana's treatise "which is, on almost every disputed point, opposite in "doctrine to the Mitakshara has no deference for its "authority. On this account independently of any other "considerations, it would have been necessary to admit "into the present volume either his treatise or some one "of the abridgements of his doctrine which are in use "and of which the best known and the most approved "is Raghunandana's Dayatattwa."

"The Dayatattwa or so much of the Smritit̆attawa "as relates to inheritance, is the undoubted composition "of Raghunandana; and, in deference to the greatness "of the author's name and the estimation in which his "works are held among the learned Hindus of Bengal "has been throughout diligently consulted and carefully "compared with Jimutavahana's treatise on which it is al- "most exclusively founded. It is indeed an excellent com- "pendium of the Law, in which not only Jimutavahana's "doctrines are in general strictly followed but are com- "monly deliverd in his own words in brief extracts from "his text. On a few points, however, Raghunandana "has differred from his master; and in some instances he "has supplied defficiencies."

"Now Raghunandana's date is ascertained at about "three hundred years from this time; for he was, pupil "of Vasudeva Sarvabhauma, and studied at the same "time with three other disciples of the same preceptor "who likewise have acquired great celebrity; viz. Siro- "mani, Krishnananda and Chaitanya; the latter is the "well known founder of the religious order and sect of "Vaishnavas so numerous in the vicinity of Calcutta "and so notorious for the scandalous dissoluteness of their "morals; and the date of his birth being held memorable "by his followers, it is ascertained by his horoscope said "to be still preserved, as well as by the express mention "of the date in his works, to have been 1411 of the "Saka era, answering to Y. C. 1489: consequently "Raghunandana, being his contemporary, must have "flourished at the begining of the Sixteenth Century." (Colebrooke's preface to the Dayabhaga.)

In some cases, the want of a translation of the Dayatattwa has necessitated the filing of authenticated translations of excerpts in the records of Suits.

These considerations have led to this attempt to present a translation of the complete work. In preparing this translation the language of Colebrooke, in his translation of such texts as are common to both the Dayabhaga and the Dayatattwa, and in the quotations from the Dayatattwa incorporated with his annotations on the Dayabhaga, has generally been, with slight variations, adopted. For such defects as may have crept into the translation, the indulgence of the generous reader is solicited.

G. C. S.

High Court, *September* 1874.

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ERRATA.

Page	1	Section	2	Line	7	for *is*	read *was.*
„	17	„	37	„	„	„	*natural* read *true.*
„	19	„	1	„	1	„	'*of brothers*' read '*by brothers.*'
„	39	„	4	„	5	„	'*freceived*' read '*received.*'
„	53	„	12	„	1	„	*a* read *at.*
„	61	„	7	„	3, 4	„	'*as participating in the offerings at obsequies*' read '*through the union of oblations (effected by the ceremony called Sapindikarana)*'.
„	75	„	69	„	1	„	'*presents*' read '*present.*'

DAYATATTWA.

BY

RAGHUNANDANA.

CHAPTER I.

1.—*Om* salutation be to Ganesa. Having prostrated himself before Vásudeva, the Lord of the universe, eternal, whose essence consists of omniscience and beatitude, the fortunate Raghunandana discusses the principles of the Law of Heritage.

2.—In this treatise are briefly expounded, the determination (of the meaning) of Partition of Heritage; also the distribution effected by the father; likewise partition by brothers; exclusion from shares; partibility and impartibility; the method of removing doubts regarding the fact of partition having been made; the distribution of what is concealed; woman's property and the right of succession thereto; and the heirs to the property of a sonless man.

3.—First, (the meaning of the term) Partition of Heritage (is discussed).

4.—On that subject Nárada says:—"Where the division of the paternal property is instituted by sons, that topic of litigation is, by the wise, called Partition of Heritage." "Property" means wealth; "paternal" signifies acquired through the relation of paternity; "where" relates to "the topic of litigation".

5.—The term "Heritage," by derivation, signifies what is given. Here the use of the verb (*dá*) is secondary; since there is a similarity (of the secondary with the primary meaning of the term) in the consequence, namely that of constituting another's right of property after annulling the previous right of a person who is dead or gone to retirement or the like. But there is no abdication on the part of the deceased, and the like, in the form of an intention, such as, "This property is no longer mine", which has the effect of putting an end to one's right of property.

6.—Likewise, from the use of the term "Heritage" to signify one's property, is inferred the cessation of the right of the previous owner. And to that property accrues others' right, dependant on relation to the former owner, by reason of the text of Baudháyana, which says "when there are sons, the property goes to them". The meaning is, if there are sons at the time of the cessation of the father's right, the property which was the subject of that right descends to the sons.

7.—As for the text of Gautama, however, cited in Mitákshará, namely: "Property is taken by reason of ownership through birth alone. This is said by the sages;" that also is to be construed in the following way:—inasmuch as it is through the relation of mere birth,—which is the cause of sonship, which is stronger than any other relation,—that the son's right to the property of the father accrues at the time of the cessation of the father's right, the son and not any other relative, should take that property. This is intended by the sages.

8.—Nor can it be argued that even while the father's right continues, the son's right accrues, at the time of his

birth, to the property of the father: for this meaning would be inconsistent with the text of Devala, which says: "When the father is dead let the sons divide the father's wealth; for sons have not ownership while the father is alive and free from defect." "Free from defect" signifies not degraded.

9.—Accordingly, Nárada, in the commencement of (the chapter on) partition, says: "If the father be lost, or no longer a householder, or his temporal affections be extinct." "Lost" means degraded; "no longer a householder" signifies, having quitted the order of a householder.

10.—Therefore the son's right to the father's estate accrues when the father's right of property is destroyed by death, degradation or adoption of an order other than that of the householder; and when his temporal affections are extinct, that is, even though the right of property remain, if the father be devoid of wish for the wealth belonging to him.

11.—Here destruction of the right of property by reason of degradation is to be understood (to take place) on disinclination to expiation, because the capacity for atonement, which can be performed with one's own wealth only, is predicated in the Srutis, even of the degraded.

12.—By the extinction of desires is meant the cessation of desires which is not identical with that absence of desires, which may co-exist with the right of property.

13.—Here it should be remarked that the right of property, being once extinguished by reason of the

cessation of desires, will not again revive with the revival of desires.

14.—Hence, because in the text of Devala (§ 8.) it is affirmed that the son's right to the father's property does not arise while the father is alive, therefore the text of Gáutama which says that "Property is taken by reason of ownership through birth alone. This is said by the sages," is to be interpreted thus :—because immediately after the extinction of the father's right, the son's right is generated through birth, consequently by reason of ownership the son takes the property of his father, not however immediately after birth, while the father's right remains.

15.—In the text of Nárada which is first quoted, (§4.) the terms father and son indicate any relatives. Accordingly Yajnavalkya, having premised partition of Heritage, says :—"The wife and the daughters, also both parents brothers likwise and their sons, gentiles, cognates and pupil and a fellow student: on failure of the first (among these,) the next in order is heir to the estate of one who departed for heaven leaving no male issue. This rule extends to all classes." From what follows, it appears that the phrase "among these" is understood after the term "first."

16.—Consequently the term Heritage is used to signify wealth in which right of property of the owner's kindred, dependant on relation of sonship &c. to the owner, arises on cessation of his right.

17.—The phrase,—"Dependant on relation of sonship &c." is inserted (in the above definition) to distinguish that right which is dependant on purchase. The phrase "on cessation of his right" excludes the wife's right to

her husband's property, contemporaneous with the husband's right.

18.—Some,* allege that partition which takes place by reason of the co-existence of other relatives (who have an equal right of succession) is a particular ascertainment of the right of property, or making of it known, which has arisen in lands, gold &c. and which extends to a part only, but which is unfit for special use and appropriation because grounds of discrimination are wanting, by casting of lots or otherwise which determine that a particular chattel belongs to a particular person.

19.—But this (definition) is not accurate. For how may it be certainly known, since no text declares it, that the lot for each person falls precisely on that article which was already his.

20.—Again if wealth be gained after the father's demise, by a brother riding one of two horses, which belonged to the father, it is universely acknowleged, that two shares of it appertain to the acquirer; and one to any other coheir. In such a case when the original property is subsequently divided, if that very horse be obtained by the acquirer, then according to the opinion of those who affirm partial rights, the horse was already his; why then should another brother share the wealth gained by him? But if the horse be obtained by another, equal participation of wealth so acquired would be proper, since it is gained by the personal labor of the one and by the work of a horse belonging to the other.

* The allegation is made by the author of the Dáyabhága

21—But in fact, partition is the adjustment by lot or otherwise into a right over a specific portion, of that right which did, by reason of the same relation of the coheirs, accrue to the whole property, upon the extinction of the right of the previous owner.

22.—Thus, even the accrual and extinction of rights over the entire estate are to be admitted, in the same manner, as in the case of the reunion of coheirs, the destruction of rights over portions, and the production of rights over the entire estate, are acknowledged.

23.—This too is (in a manner) acknowledged by the author of the Dáyabhága who himself writes :—In the following text of Brihaspati, namely : "He who being (once) separated dwells again through affection, with his father brother or paternal uncle is termed reunited," because the father, the brother, the paternal uncle and the like, are from their birth likely to be united as regards the property acquired by the father or the grandfather; they alone may, become re-united, when being once separated they annul, through mutual affection, the previous partition with the agreement to this effect, that the wealth which is thine is mine, and what is mine is thine, and remain like one householder in any transaction. But not an association of merchants who, unlike the coparcenars, are by the mere union of stocks formed into a partnership, nor the mere union of estate of separated coparceners without the stipulation based upon affection (are to be looked upon as instances of reunion.)

24.—By reason of the right being common, the text of Kátyáyana, which says : "A coparcener is not liable for the use of any article which belongs to all the undivided

relatives," becomes consistent in its literal sense; inasmuch as his own right extends over every article; accordingly there can be no theft in such a case, as will be shewn hereafter. (chap. viii.)

25.—Similarly also, by the text of Nárada namely: "Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents," the prohibition of mutual gift &c. amongst undivided coparceners becomes logically consistent: Because (in such a case) there is an impossibility of gift and acceptance, inasmuch as the acceptor, had a right to the property given, even before a gift of it was made.

26.—All the coparceners are entitled to the fruits of all acts, either temporal or spiritual, which are performed with the use of the joint property; since their right is common. This is affirmed also by Nárada: "Among undivided brethren, duties continue common; but when partition takes place, their duties also become different."

27.—Vyasa ordains: "Let no one without the consent of the others, make a sale or gift of the whole immoveable estate nor of what is common to the family. Here, from the use of the adjective "whole," it appears that the right of each parcener accrues to the entire estate.

28.—Therefore, when there are two persons equally related to the deceased, each of them considers the property left by the deceased to belong to himself as well as to the other co-heir. Gift and the like by the one for his own purpose, is prohibited, should the other's consent be wanting.

29.—Therefore it is established that the right does not accrue to a fractional portion.

30.—Brihaspati lays down a special rule with regard to the allotment of shares :—"All the sons take equal shares of the property of their father; but of these he who is learned and virtuous deserves a larger share; "Since a person becomes father by that son who has in the world acquired a fame in literature, science, heroism, acquisition of wealth, knowledge of theology, charity and commerce."

31.—Brihaspati also speaks of partition by use at successive periods :—"A single female slave should be employed on labor in the house (of the several co-heirs) successively according to the number of shares."

32.—Here there is clearly the supposition either of the production and destruction of different temporary rights of a single person over a single individual; or of the temporary cessation of different rights of all.

33.—A text of Kátyáyana cited in Kalpataru and Ratnákara declares that (the law of) partition may be different in different places and the like:—"Partition of Heritage is to be regulated by the law which may obtain in a country, in a class, in an association and in a village. Bhrigu (has ordained this)." "Has ordained this" is understood.

CHAPTER II.

PARTITION MADE BY THE FATHER.

1.—In the next place (is discussed) the distribution made by the father. (On this subject) Hárita (says): "A father during his life may, after distributing his property, retire to the forest, or enter into the order suitable to an aged man; or he may remain at home, having distributed small allotments and keeping a greater portion: should he become indigent, he may take back from them." "The order suitable to an aged man," intends, retirement.

2. By this text, the father is authorized to distribute a small part, and to reserve the greatest portion of the wealth.

3. Vishnu (ordains): "When a father separates his sons from himself, his own will regulates the distribution: but in the estate inherited from the grandfather the ownership of the father and the son is equal."

4. As regards even his self-acquired property, the unequal distribution by his own will should be guided by such reasons as the existence or absence, of filial piety, of large family, of inability, and the like, (of any son.) This is affirmed by Kátyáyana: "But let not a father distinguish one son at a partition made in his lifetime, nor capriciously exclude one from participation without sufficient cause."

5. But when there are none of the reasons enumerated above (a father may not make an unequal distribution.) This is declared by Nárada: "A father who is afflicted with disease or influenced by wrath, or whose

mind is engrossed by a beloved object or who acts otherwise than the Sástras permit, has no power in the distribution of the estate." "Beloved object," intends, the son of a wife on whom he dotes, and the like.

6. But should the sons themselves request partition, in that case, Manu declares the absence of unequal allotment: "If the undivided brethren do, with one accord, desire partition, then the father shall, on no account, make an unequal distribution."

7. The father, if unwilling, shall not share with his sons his paternal property, which was seized by strangers but which he recovered. This is ordained by Manu and Vishnu: "If the father recovers paternal wealth (seized by strangers and) not recovered (by other sharers nor by his own father) he shall not, unless willing, share the same with his sons,—it was acquired by himself." The construction is, that he shall not share it with his sons, because it was, as it were, acquired by himself.

8. But as regards the case of recovery by any other (than the father), the law is propounded by the text of Sankha which is hereafter cited. (§. 11.) This follows from the logical interpretation of two provisions, one of which is general and the other special.

9. This however refers to immovable property.

10. But in gems and the like, though not recovered by him, the father alone has ownership: as Yájnavalkya intimates: "The father is master of all the gems, pearls and corals without exception: but neither the father nor the grandfather is so, of the whole immovable property."

Since the grandfather is here mentioned, the text must relate to his wealth.

11. In like manner, the following text of Sankha refers to a case of recovery by brothers and the like: "When one parcenar alone, by his exertion, recovers land which was lost before, the others take in proportion to their shares, after setting apart a fourth for him."

12. Here the recoverer should, after appropriating a fourth share for himself, take an equal share of the remainder with his brethern: otherwise the shares might become inequitable.

13. When the father effects the distribution, he should allot to his sonless wife a share equal to that of a son. Because Vyása declares: "But the father's wives, who are without male issue, are declared to be entitled to equal shares with his sons; and all the grandmothers are declared to be equal to mothers."

14. This rule applies when Strídhana has not been bestowed. This is affirmed by Yájnavalkya: "When the father (by his own choice) makes all his sons partakers of equal shares, his wives, to whom Strídhana has not been given by their husband or father-in-law, must be made participants of shares equal to those of sons."

15. In order to the consistency of the texts of Vyása and Yájnavalkya, the phrase "father's wives" in the text of the former (§. 13) is to be construed, "when the father distributes his property, his wives."

16. Nor can it be said that the converse is the case here; because the logical rule of interpretation is, that

"when a provision of law is clear in itself, it should not be controlled by any other."

17. Therefore in a case of partition made by the sons, the step-mothers (without male issue) are not entitled to any shares.

18. When Stridhana has been given, the husband should allot to his wife half the share of a son. This appears to be the law (from the combined effect of the following texts of Yájnaválkya and Baudháyana); for Yajnavalkya observes in a case of marriage: "To a woman, whose husband marries a second time, let him give her an equal sum, (as a compensation) for the supercession, provided no separate property have been bestowed on her: but if any have been assigned, let him allot half (the share of a son); and Baudháyana says: what is affirmed of even one among many who have a common property, the same is to be extended to every one, since they are considered similar."

19. When partition is made, by the grandsons, of the property of their grandfather, a share ought to be allotted to the grandmother, in the same manner as a share is given to the mother (when paternal property is divided.)

20. Vishnu says: "But in the property left by the grandfather, the father and the son have equal ownership." Also Yájnaválkya ordains: "The ownership of the father and the son is the same in land or in a corrody or in chattels which were acquired by the grandfather." The author of the Kalpataru defines 'a corrody' to be, what is granted by the king and the like, receivable periodically from a mine or similar fund: 'chattels' from their association (with land) here means biped (i. e. slave); because

another text affirms : " Although immoveables and bipeds have been acquired by a man himself, a gift or sale of them should not be made by him without the consent of all the sons. "

21. According to these texts, in regard to the land or a corrody or slaves acquired by the grandfather, as the father has right over these by reason of his being the person who presents oblations at solemn obsequies, so if his right cease by death or other cause, his sons have a right, notwithstanding their uncle, to so much, as should have been their father's share.

22. For the same reason the text of Kátyáyana quoted in the Rátnakara declares : " If an unseparated son dies, his son should be made participant of his father's share; he who has not received maintenance from the grandfather is entitled to get his father's share from his uncle or uncle's son. "

23. During the lifetime of the father, the grandsons are not entitled to any share, inasmuch as they are then incapable of presenting funeral oblations to the grandfather.

24. Similarly on the extinction of the right of the proprietor's grandson, his greatgrandsons become participators of his (the grandson') share only. But they get no share during the grandson's lifetime.

25. Or the above texts may admit of the following interpretation, namely, that as the father is at full liberty to allot unequal shares, when he is distributing his self-acquired property : the same is not the case here (i. e. when distributing his paternal estate.)

26. But these texts do not intend equal ownership of the father and the son. Because two shares of the father are declared by the following text of Nárada: "Let the father making a partition reserve two shares for himself: when her husband is dead, the mother is entitled to an equal share with her sons."

27. Nor can this refer to the self-acquired property of the father; because as to that the unlimited discretion of the father declared by Vishnu in the text, "His will regulates the division of his self-acquired property," ought not to be restricted to two shares; also because it would be contradictory to the text of Hárita which ordains; "He may remain at home keeping the greater portion to himself."

28. But the text of Nárada (§ 26.) refers to the property of the grandfather and the other ancestors.

29. Also the following text, cited in the Mitákshará, refers to the property left by the grandfather: "By favour of the father apparels and ornaments are used: but immovable property may not be consumed (even) with the father's indulgence": because the self-acquired immoveable property, granted by the father, may, of course, be consumed (by the sons); otherwise an objection would arise in the shape of an inference of a different radical revelation.*

* The meaning is this. The text viz., "But immovable property may not be consumed even with the father's indulgence" refers to the grand-father's property, and not to the self-acquired property of thefather, For the father's unlimited authority over his self-acquired property is declared by innumerable texts. Consequently there is no reason, why the son might not consume the father's self-acquired property even with his indulgence. If it be argued that this text itself intends to put a restriction to the unlimited power of the father upon his self-acquired property in that case an objection would arise,

30. Brihaspati declares that the distribution of an estate left by the grandfather or other ancestor takes place only when the mother is past childbearing: "On the demise of both parents, participation among brothers is allowed; and even while they are both living, it is right, if the mother be past childbearing." Here the term mother includes also a stepmother; because of the parity of reason, namely, the probability of the birth of other sons.

31. Because it is affirmed that "if the mother be past childbearing," therefore the text refers to the property left by the grandfather, but not to the estate of the father; for as to this, provision is made for the share of one who is born after partition. As Brihaspati declares; "The younger brothers of those, who have made a partition with their father, whether children of the same mother or of her rivals, shall take their father's share. A son born before partition has no claim on the paternal wealth; nor one begotten after

in the shape of an inference of an opposite revelation. This objection cannot be comprehended unless the following doctrine of Hindu revelation be taken into consideration. The Hindus believe that their law is based upon revelations which were not recorded by the sages who were inspired therewith. But they handed down these to their disciples who traditionally remembered the purport, but not the letter of these revelations. The sense of these revelations was, by the remembering sages expressed in their own language which was recorded. Hence Hindu law bears the designation of Smriti which signifies "what is remembered." Therefore the subsequent Hindu writers classify their revelations under two heads namely the direct and the inferential. By the direct are included the three Vedas consisting of the Mantra and the Brahmana, and the Upanishads. Under the inferential are comprised those that are deduced from Smriti or the texts of Hindu law, and from the customs and usages which are observed from time immemorial, by the learned world, but which are not expressly prohibited.

Now, if the argument that a restriction was intended by the above text to be placed upon the unlimited authority of the father over his self-acquired property be correct, then a revelation is to be inferred to the following effect; that a person has not unlimited authority over his self-acquired estate. But from the texts, which lay down that a person has an absolute right of disposal as to his self-acquired property, a contradictory revelation necessarily follows. This would be absurd. Therefore the interpretation put by the author upon the above text is perfecty consistent. TRANSLATOR.

it, on that of his brother. As in the property, so in the debts likewise and in the gifts, pledges, and purchases, they have no claim on each other, except for acts of mourning and libations of water." "Begotten after partition," signifies, one that is conceived after partition.

32. Yájnavalkya says: "When the father makes a partition, let him separate his sons (from himself) at his pleasure: and either (dismiss) the eldest son with the best share or (if he choose) all may be equal sharers." In this text, the phrase "at his pleasure," refers to self-acquired property: "with the best share," means a share joined to the twentieth part set apart for the eldest; the best and equal shares refer to the grandfather's estate; for thus it would be consistent with the proposition which is first laid down.

33. Likewise the following text of Gotama refers to the estate of the grandfather; because it says "if the mother be past childbearing:" "After the demise of the father, let the sons share his estate: or when he is alive, if the mother be past childbearing and he desire partition."

34. Therefore also, because death of the father is indicated by the phrase 'after the father', and because the desire of the father alone is expressed by the passage 'while he is alive if he desired partition": consequently it is established that the distribution of the grandfather's estate may take place at the desire of the father and not at that of the sons.

35. Likewise, the text of Devala which says: "They have no ownership while the father is alive and free from defect," and the text of Baudháyana which declares: "Partition takes place by permission of the father," are

without distinction applicable as well to the father's property as to the estate left by the grandfather.

36. Should however the estate of the grandfather be accidentally distributed even before the mother is past childbearing. (To meet that contingency) Vishnu says: "Those to whom the father has allotted shares, should allow a share to one who is begotten after partition." This text does not refer to the property of the father, because in that case it would be inconsistent with the text of Brihaspati cited before. (§. 31.)

37. Referring to the twelve kinds of sons, Devala says: "All these sons of one destitute of natural issue are held to be entitled to the inheritance: but should a true legitimate son be afterwards born, they have no right of primogeniture. Such among them as are of equal class (with the father) shall have a third part as their allotment: but those of a lower tribe must live dependant on him, supplied with food and raiment." "Entitled to the inheritance" means entitled to a full share. Of these, other than the natural sons, those that are of the same class with the father are entitled to a one-third share when there is a natural son.

38. As to this again, Manu lays down, a particular rule: "The legitimate son and the son of a wife participate in the property of the father (in the way specified above), and the ten remaining sons are successively entitled to a share of the property as well as to the membership of the family." By reason of his being the propagator of the family and the giver of the funeral cake which is due by the proprietor, the son of an

appointed daughter in the first place, and after him the adopted son become entitled to the inheritance and to the membership of the family. "Successively" (or in other words) in succession, that is, in the absence of the first of these, the next in order are entitled to the inheritance and to the membership of the family.

39. Yajnavalkya declares the participation of the son of a female slave of a Sudra: "Even a son, begotten by a Sudra on a female slave may take a share at the desire of the father; but if the father be dead, the brethern should make him partaker of half a share; one who has no brothers (begotten by the father on a wife) may inherit the whole property in the absence of the daughter's son." "At the desire" means, at the choice of the father; "a share" means, a share equal to that of other sons.

40. When however there is a daughter's son, he gets an equal share with the son of a female slave; and this is reasonable, because the one is begotten by a woman who is not wedded and the other is a legitimate descendant.

41. Manu states the distribution (of property) between a true son and the issue of the wife begotten without due authority: "If there be two sons a legitimate one and the son of a wife, who are claimants through the same (person) each shall take the property which belonged to his father: and not the other." "Claimants through the same," means, claimants begotten by the same mother. The meaning is, let each receive the wealth of him from whose seed he sprung: and let not the other who sprung from the seed of another person take it.

42. As regards also the woman's property, let the son of each father take that which was bestowed on her by his father: and not the other. Accordingly, Narada says: "If two sons, begotten by two fathers, contend for the wealth of the woman, let each of them take that which was his father's: and not the other."

CHAPTER III.

PARTITION BY BROTHERS.

1. Partition of brothers after the demise of the father is next explained. On this Devala says: "Let the sons divide the father's estate on the demise of the father." "The father's estate" signifies, the property inherited from the father. Narada says: "Whatever remains after the father's gifts are given, and his debts liquidated, should be divided by the sons, so that the father might not remain a debtor." 'The father's gifts' signify, what the father promised to give. It appears from the passage 'that the father might not remain a debtor,' that in case of inability (to liquidate the father's debts at the time of partition) it ought to be acknowledged before the creditors that the debts shall be paid off after partition.*

2. Here (it should be remarked that) while the mother is alive, partition by uterine brothers is not compatible with moral duty; as is intimated by Sankha and Likhita: "Since inheritance is the basis of the family, the sons are not independent while their father is alive, also while their mother is in a similar predicament." For the

* Nárada's text indicates that the Hindus had to a certain extent the power of making a will.—TRANSLATOR.

same reason Vyasa says: "For brothers a common abode is ordained, so long as both parents are alive; but religious merit of them, if separated after their decease, increases." The meaning is, because a separated brother performs the ceremonies enjoined by the Vedas with the wealth appertaining to himself alone, consequently there is an increase of religious merit of that one alone.

3. If however (the paternal property) be distributed (while the mother is alive,) then the mother is entitled to participation. This is declared by Katyayana: "On the demise of the father, the mother too partakes of an equal share with the sons."

4. Participation of an equal share too is only when the mother has not got woman's property (Stridhana) but if she has, a half share is to be allotted to her. This follows from the text cited before (Ch II §. 17).

5. Brihaspati] describes two modes of partition either with or without specific deductions (of a twentieth part for the eldest and so forth): "For co-heirs two modes of partition are ordained: one in the order of seniority of age, and the other by allotment of equal shares." The phrase 'in the order of seniority of age' intends, specific deductions.

6. But the absence of specific deductions among the Sudra class, will be hereafter mentioned.

7. Although equal division is in conformity with the Sástras, still the alternative of specific deductions, taking place out of an excess of reverence towards the seniors in age is not contradictory, in the same manner as partition or non-partition is optional (with the coheirs.)

8. On this Manu says : "But the eldest alone may take the paternal estate in its entirety : and the rest may remain dependent on him as they did on the father." Also Nárada says : " Or the eldest brother may, like the father, support all the others, if they be willing : or even the youngest brother, if capable (may do so) ; for rank in a family is proportional to ability." The middlemost of course may be here inferred from the analogy of the staff and cake.

9. This analogy is as follows : to gnaw the staff was difficult for the rat ; but if that were accomplished, the eating of the cake which was attached to it is inferred, because it is the easier, so, in other cases, according to their circumstances, if one of associated things be true the other may be rightly inferred.

10. Consequently as there is no distinction, Narada says : " He, who being engaged in the management of the family performs its business, should be honored by the brothers with (presents such as) food, apparel and conveyances."

11. Vyasa praises one who acts in that way : "During whose life Brahmanas, friends and relatives gain their maintenance, his life is fruitful : for who does not live for his own sake ?"

12. In Harivansa, Narada addressing Indra describes the evils springing from a contrary conduct : " O, Destroyer of Bala ! mutual disagreement among brothers and friends causes only the delight of enemies : in this no doubt (can exist.)"

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13. Here (it is to be remarked that) Nárada declares a common abode by the consent of all (the coheirs).

14. But partition is not so. This is indicated by Katyayana, who, after having commenced, (the subject of) partition, says: "The wealth of those that have not attained to maturity as also of those that have gone to a distant place, should without expense be entrusted to the relatives, who are friendly disposed to them." "Those that have not attained to maturity" means, the minors.

15. If one of the co-heirs by reason of his own ability, decline to take his share of the property inherited from the father or other ancestor, something should be given to him, be it only a *Prastha* of rice on his separation, for the purpose of obviating denial in future, on the part of his son or other heir. This is ordained by Manu. "If any one of the brethern has a competence from his own occupation, and desires not the property, he may he debarred from his share, by giving him some trifle in lieu of maintenance."

16. Katyayana says: "The visible objects such as a house, a field and a quadruped should be distributed: on suspicion of some hidden property, some test is ordained." "Test" signifies, divine test (such as ordeals by the balance and the like.)

17. This text is rendered clear (by the following text): "Bhrigu declared, that visible objects such as household furniture, conveyances, those (quadrupeds), that are milched, ornaments and workmen should be distributed: on suspicion of some hidden treasure,

resort must he had to *kosha.*" "Household furniture means the pestle and the like; "workmen" indicates, slaves; *kosha* signifies, a particular thing, and its meaning is to be searched in a treatise on things (i. e. in a vocabulary); the rest is well known.*

18. Narada says: "For those, whose forms of initiation have not been, in the prescribed order, performed by the father, these ceremonies must he completed with their paternal property. But, if no wealth of the father exist, the ceremonies must, without fail, be performed by the brothers already initiated, contributing funds out of their own portions."

19. To the daughters however property sufficient to defray the expenses of marriage should be given, as is said by Devala. "Wealth sufficient for marriage should be allotted to the daughters out of the estate of the father. And the legitimate daughter of one without male issue is, like the sons, entitled to inheritance." Vishnu says; "But of maiden daughters the ceremony of marriage should be performed, according to one's own inheritance."

20. Thus the texts which ordain the allotment of a fourth share (to a maiden daughter), are to be construed to signify the allotment of property sufficient for marriage.

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* The divine tests are described in the Mitakshara, Vyavahara Section, Chapter VIII. The following text of the Mitakshara in which the term *kosha* occurs, enumerates the divine tests: তুলাগ্ন্যাপো বিষং কোষো দিব্যানীহ বিশুদ্ধয়ে।

Mr. Macnaughten translates this text in the following way: The balance, water, fire, poison and sacred libation are the divine tests for purgation (or the removal of suspicion in a doubtful matter.) Here the term *kosha* is rendered "sacred libation," which signifies the water in which the idol worshipped by the person whose truthfulness is to be tested, is bathed; the person is then ordered to drink a portion of that water.

21. The following textof law cited in the Dwaitanirnaya declares that the ceremonies of marriage may be performed even by relatives other than the father: "Let the father himself or any other in his absence, according to the (recognized) order, perform the eight rituals, such as the causing of conception and the like."

CHAPTER IV.

EXCLUSION FROM INHERITANCE.

1. In the next place, those that are excluded from inheritance (are determined.) Apastamba says: "All co-heirs who are indued with virtue are entitled to the property. But he who dissipates his wealth by vices, should be debarred from participation, even though he be the first born." The meaning is, even though he be the first born son.

2. The same opinion is propounded by Brihaspati who says:—"Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth. It is declared to belong to such kinsmen offering funeral oblations to him, as are of virtuous conduct." "Offering funeral oblations to him" means, offering funeral oblations to the owner; therefore is said "of virtuous conduct;" "destitute of virtue" means, having defects inconsistent with virtue. In the Ratnakara the last line of the text of Brihaspati is read as follows:—"Those offering funeral oblations to him shall accord food and raiment to those destitute of virtue." In this reading too it appears as a matter of course that the funeral oblations are offered to the owner.

3. "As a man passing over water on a bad raft, sinks, so a person with a bad son becomes immersed in the deepest darkness."

4. Kátyayana says: "Property is created for (the performance of) religious ceremonies; therefore property should be entrusted to persons who are worthy of property, and not to women, to the ignorant and to the vicious."

5. The term "women" in the above text signifies wives of kinsmen, and not the owner's wife and the like, with regard to whose succession there are special provisions.

6. Also, "A son who is devoid of science, heroism, and the like, who is destitute of devotion and charity, and who is wanting in (religious) observances is similar to urine and excrement."

7. Sankha says:—"He who takes the property of the deceased without performing the funeral obsequies, should without fail perform the expiatory rite, which is ordained for the classes in atonement of murder."

8. Devala declares: "When the father is dead, an impotent man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast and a person wearing the badge (of religious mendicity) are not competent to share the heritage. Food and raiment should be given to them excepting the outcast. But the sons of such persons, being free from similar defects, shall obtain their father's share of the inheritance."

"An idiot" is one incapable of performing religious duty; "a blind" signifies one who is born blind, by reason of the text of Manu which says: "Likewise those that are blind and deaf from their birth;" "a person wearing the badge" is one who has assumed hypocritical mark of austerity.

9. Nárada ordains; "An enemy to his father, an outcast, an impotent person, and one who is addicted to vice (or has been expelled from society) take no share of the inheritance, even though they be legitimate; much less if they be sons of the wife." "An enemy to his father" is one who abuses him by beating and the like while he is alive, and who is unwilling to perform his funeral obsequies when he is dead. The term of which the translation is "one who is addicted to vice" literally signifies, one stained with sins. But the author of the Kalpataru reads it as *Apapátrita* and explains it to mean one who is excommunicated by his relatives, on account of heinous crimes such as murdering the king and so forth. The author of the Prakasa, having read it as *Upapátaki* expounds it as signifying one who has committed sins.

CHAPTER V.

EFFECTS LIABLE OR NOT LIABLE TO PARTITION.

1. In the next place are discussed partibility and impartibility. On this Vyasa says; "What a man acquires by his own ability, without relying on the patrimony, he shall not give up to the coheirs, nor that which is acquired by learning."

2. Kátyayana describes the wealth acquired by learning: "What is gained through learning by the solution (of a difficulty) after a prize has been offered must be considered as acquired through science, and is not distributed (among coheirs.) What has been obtained from a pupil or by officiating as a priest, or for (answering) a question, or for determination of a doubtful point, or through display of knowledge, or by (success in) disputation, or for superior (skill in) reading, the sages have declared to be the gains of science and not subject to distribution. The same rule likewise prevails in the arts. The excess of price (of the common goods) over the current one, and that which is gained through skill by winning from another a stake at play, must be considered as 'acquired by science' and not liable to partition. So Brihaspati has ordained."

3. The author of the Dayabhága makes the following explanatory comments on this text:—"If you solve this well, I will give you so much money," after such an offer if one solve the difficulty and obtain the prize, it is not subject to distribution: "From a pupil" from a person instructed by the acquirer: "by officiating as a priest," received as a fee or gratuity from a person employing him

to officiate at a sacrifice; these are fees not presents, for they are similar to wages: so a question relative to science being resolved; if any one through satisfaction, give anything which had not been previously offered: also what is obtained by clearing the doubts of one by whom an offer has been thus made: "To him who removes my doubts on the meaning of this passage of the Sástras, I will give this gold"; or it may signify a fee such as the sixth part or the like, received for a correct decision between two litigant parties, who apply for the determination of a dubious and contested point: likewise what is received as a present and the like for displaying his knowledge in the sacred ordinances and so forth: so in a contest between two persons respecting their knowledge of sacred ordinances, or in any other controversy whatsoever concerning their respective attainments, what is gained by surpassing the opponent: likewise where a single article is to be given, and there are many competitors, what is received for reading in a superior manner: also what is gained by painters, goldsmiths and other artists through their skill in the arts and so forth: in like manner what is gained by beating another at gambling. All this is exempt from being shared with the rest of the coparceners. Therefore whatever is acquired by any (skill or) science belongs to the acquirer, not to the rest. Only to show this Kátyayana has stated at large,"

4. Nárada says: "He who maintains the family of a brother studying science shall take, be he ever so ignorant, a share of the wealth gained by science." From the singular number in the verb "maintains" it appears that if a person, by his own expense or bodily exertion maintain

the family of his brother while he is studying science (or art,) then he has a right to the property acquired through science (or art). "Ignorant" means, illiterate.

5. A text of Katyayana cited in the Kalpataru, in the Mitakshara, and in the Dipakalika, says: "Wealth gained through science, which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning." "From a stranger" means, from one different from the families of the father and mother.

6. On this (point) he again lays down a special rule: "No part of the wealth which is gained by science, need be given by one versed in learning to his unlearned coheirs, but such property must be yielded by him to those who are equal or superior in learning." The term "in learning" which occurs only once in the text is to be construed with both; consequently a share is to be allowed to one equal in learning and to one superior in learning, not to one inferior in learning, nor to one without learning. 'Versed in learning' means, learned.

7. Another special rule is laid down, (by the same sage:) "The property of brethern who have acquired learning from the family or the father, also that gained through heroism are liable to distribution. So Brihaspati has ordained." Of this text the following explanation is given in the Kalpataru and the Ratnákara: "That property which is gained through knowledge and courage by brethern who have acquired the learning (or skill) from the family (that is to say) from his own family (or in other words) from the paternal grandfather, uncle and the like or from the father, is subject to distribution."

8. Kátyayana again ordains : " The father is entitled to a moiety or a double share of a son's acquisition of wealth." " A son's acquisition of wealth" signifies, wealth acquired by a son. This follows from the following rule (of grammar) namely, " A participial affix to a verb, which tansforms a verb into an abstract noun, sometimes bears the sense of a participle past passive.

9. The father's participation of a double share takes place when the acquisition is not made with the use of the paternal property, or when it is made with the use of a brother's property. The acquirer however takes a double share. But when the brothers' wealth is used, then each of them also takes a share as is intimated by a text of Vyasa which will be hereafter quoted (§ 18). The father's participation of a moiety, however takes place according to the Dayabhága, when the father's property is used or when the father is endowed with excellencies. When no other's property is used, then the father takes a double share, the acquirer also as such is entitled to two shares, the rest get nothing : but when a brother's wealth is used, he also takes a share. This is the explanation of the distinction between a double share and a moiety.

10. Kátyayana again declares : " The commons, the carriage road, clothes, and any thing that is worn on the body should not be divided ; nor what is requisite for use or intended for arts : so Brihaspati has declared." " Requisite for use " is what is fit for each person's use, as books and the like which should not be shared by the learned &c. with his ignorant coheirs. The same explanation is given in the Dayabhága, 'Madanapárijata' and others.

11. Yájnavalkya says: "Whatever is given by the parents (to any child) let that become solely his property." The great Doctor Súlapani (offers the following explanation): "Whatever ornaments and the like are given to a son or daughter become exclusively his or hers."

12. Nárada says: "Both what is gained by valor and the wealth with a wife, as well as what is acquired by science these three (sorts of property) are exempt from partition; so also any favor conferred by the father." "The wealth with a wife" signifies, the wealth received at the time of receiving the wife, that is, at the time of marriage: this meaning is indicated by the following text of Bharadwája; "And what is received with the wife." If "excepting" be read instead of "both" (in the text of Nárada) then the text "excepting these three *which* are exempt from partition," should be construed with "the rest shall be divided," which passage occurs in a preceding text (of Narada.) Therefore (the meaning would be unchanged viz.) these three are exempt from partition.

13. When an object, which is bestowed as a favor, forms the subject of gift to two persons in succession, it becomes the property of the first donee. This follows from the following text of Yájnavalkya: "In all disputes (concerning property) the posterior act prevails. But in cases of pledge, gift, or sale the prior act predominates." Here the meaning is that what prevails is valid.

14. In connection with this, also it is to be understood that an act of pledge prevents the use of the property by the owner according to his own will; and not that

it is completed by the destruction of the owner's right. Therefore an act of pledge whether prior or posterior is controlled by the predominant acts of gift and sale which are completed by the extinction of the previous owner's right.

15. To this effect is the following text of law cited in the Ratnákara and others: "If after making a bailment or pledge, a pledge or sale be made, then the posterior act prevails." The construction is that if after making a bailment a pledge be made (of the same thing) or if after making a pledge a sale be made, then the posterior act is valid. The term sale includes gift, by reason of the destruction of the previous owner's right (being similar in both cases.)

16. Thus also if the pledge be not redeemed by reason of death or the like of the seller or donor, it may be redeemed by the buyer or donee, because a right equal to that of the former owner has been generated by the sale or gift. In such a case if a dispute arise as to the source of the right, then the buyer or the donee (who is admitted as such) is required to prove his possession and not the commencement of his title.

17. Sankha and Likhita declare: "No division of a dwelling-house takes place; nor of water-pots, ornaments, and things not of general use; nor of women, clothes and channels for draining water. Prajápati has so ordained." If one of the coheirs constructs a house or garden within the site of the dwelling place, and

another does the same in a different part, in that case what is constructed by each becomes his property. So in other cases also.

18. With regard to the property acquired (by one of the co-heirs) through the use of joint-stock, a special rule is propounded by Vyasa: "The brethern participate in that wealth which one of them gains by valor or the like using any common property such as a weapon or vehicle. To him two shares should be given: but the rest should share alike." It should be observed that the term brethern in the text includes also the uncle and the like. The following explanation is given in the Dayabhaga: "If the joint stock be used by the acquirer, shares should be assigned to each coparcenar in proportion to the amount of his allotment, be it little or much, which has been used."

19. Nor should it be alleged that by the following text of Vyasa one coparcenar has no power to give, mortgage or sell any property: "A single parcenar may not, without consent of the rest, make a sale or gift of the whole immovable estate, nor of what is common to the family. Separated kinsmen as well as those who are unseparated are equal in respect of immovables: for one has no power over the whole to give, mortgage or sell it."

20. "Because the right of property over the joint estate is not distinguishable from that over any other thing, and this right is nothing else but the capacity of dealing with the property according to pleasure".

21. "The text of Vyasa embodying a prohibition, however, is intended to show that a moral offence is committed, if, by an exercise of the right, the property be transferred to a person of bad character; since the relatives would be troubled by such a proceeding:* and not that the sale and the like would be invalid." The above explanations are given in the Dayabhaga.

22. The author of the Vivadachintamani expounds the text of Vyasa in the following way: "When the co-heirs are separated (in mess,) but the estate, instead of being distributed, continues joint, then because their rights are undistinguishable, one has not power over the whole property. But when the shares are separated, then, of course, the exercise of power by one is valid."

22. But in fact the taking of permission after partition is ordained for the purpose of obviating any doubt as to the boundaries and the like, of what has been divided as well as of what remains joint, in the same manner as the permission of the head of the village and of the like is taken.

23. Consequently the use of property without the sanction of the separated co-heirs, is valid.

24. The same doctrine is propounded in the Mitakshara by the following text: "Land passes by six (formalities;) by consent of towns-men, of kinsmen, of neighbours and of relatives, and by gift of gold and water." "Relatives," signify, daughter's son and the like (who are sprung from a different family;) since, kinsmen are separately mentioned.

* The author of the Dayabhaga indicates the same principle on which the law of pre-emption is based.

25. "By gift of gold and water." Since the mere sale of immovables is forbidden by the following text of Devala: "In regard to the immovable estate, sale is not allowed, it may be mortgaged by consent (of parties interested;)" and since donation is praised, in the following text: "Then he who gives and he who accepts land, both of these perform a virtuous act and are certainly entitled to go to heaven," therefore if a sale must be made, it should be conducted for the transfer of immovable property, in the form of a gift, delivering with it gold and water (to ratify the donation.) This explanation is given by Vijnaneswara.

26. But in reality, the prohibition of the sale of immovables is in respect of joint estate. As regards even that, if support is impossible without sale, then when a sale must be made, it may, at the desire of the buyer, be conducted in the form of a gift, in order to obviate any dispute with the co-sharers.

27. Therefore the figurative predication of gift by Hárita in the following text: "And what is given to a benefactor," refers to a (sale in the form of) gift to a benefactor who saves from distress (by paying the consideration.)

As to gifts made to any other benefactor, Daksha states the religious merit arising from them: "What is given to the mother and father, to a friend, to a disciple to a benefactor, to the poor, the orphan and the learned, becomes fruitful."

28. Therefore Nárada says: "Should they give or sell their own share; they may do all that they please, for they are masters of their own wealth."

29. Yajnavalkya says: "He who recovers hereditary property which had been taken away, shall not give "it up to the coparceners: nor what has been gained by science." He who recovers, with the sanction of the other copartners, property inherited from the father or grandfather which had been forcibly taken away by strangers shall not yield it to the other co-sharers.

30. Sankha lays down a special rule regarding land: "Land (inherited in regular succession) which had been formerly lost, but which a single (heir) recovers solely by his own labour, the rest may divide according to their due allotment, having first given him a fourth part." In the Ratnakára it is affirmed that this text is not consonant to reason because it is not cited in the Smritimaharnava Kamadhenu, Párijáta, and others. This is not (tenable) because it is quoted in the Dayabhága, Mitákshará and the like.

31. In the Mitákshará a special rule is laid down regarding ancestral property which had been lost but recovered: "Though immovables or bipeds (slaves) have been acquired (i. e. recovered,) by a man himself a gift or sale of them should not be made unless convening all the sons; they who are born and they who are yet unbegotten and they who are actually in the womb, all require the means of support: the dissipation of their (heriditary source of) maintenance is censured."

32. To this an exception (is mentioned): "Even a single (coparcener) may make a gift, bailment or sale of immovable estate at a time of danger, for the sake of the family and specially for a religious purpose." "Bailment" signifies, mortgage.

33. Manu declares that gift, mortgage, or sale for the purpose of the family is valid even when made by a slave: "Even the most dependant may make any transaction for the sake of the family: the master (remaining) either in his own country or a different one should not refuse his sanction." Kulluka Bhatta writes the following gloss on this text: "While the master is in that place or in a different one, even a slave may contract debts and the like for the use of the family: the master should sanction the same."

34. Brihaspati clearly ordains: "The master of the house is liable to pay for what is taken for the sake of the family, by an uncle, a brother, a son, a wife a disciple and the dependants,"

35. Manu says: "The coparceners though separated should out of their own (share) pay for what has been taken and expended for the purpose of the family, should the taker abscond." From "their own" signifies from their own property.

36. Kátyayana declares: "What is taken for the use of the family in time of need or disease, or by reason of distress, is known as done through danger; as also for the marriage of daughters; and what is done for the benefit of the departed; all this done by a relative is due of the master." The family must at any rate, be supported. In this text, the genitive in the phrase "due of the master" signifies the agent, therefore the meaning is "should be paid for by the master." This explanation is given in the Ratnákara.

37. The following is extracted from the Dayabhaga :— Hárita says : " While the father lives, sons have no independent power in regard to the receipt, expenditure, and bailment of wealth. But if he be decayed, remotely absent, or afflicted with disease let the eldest son manage the affairs as he pleases." So Sankha and Likhita explicitly declare : " If the father be incapable let the eldest manage the affairs of the family, or with his consent a younger brother conversant with business. Partition of the wealth does not take place if the father be not desirous of it. When he is old or his mental faculties are impaired, or his body is afflicted with a lasting disease, let the eldest like the father protect the goods of the rest, for (the support of) the family is founded on wealth. They are not independent while they have their father living nor while the mother survives." These two passages forbidding partition when the father is incapable of business or when he labours under a lasting disorder, direct that the eldest son should superintend the household, or a younger son who is conversant with business.

38. Consent however may be inferred from the absence of prevention. This follows from a text of Kátyáyana cited in the Prayaschittaviveka : " When the master does not prevent the gift of his own property by a co-sharer or even a stranger, then the gift is in effect, made by himself. This is ordained by Bhrigu."

39. To this effect is the following aphorism of the logicians namely, a statement not traversed is equivalent to an admission.

40. Thus, such a gift becomes valid by reason of the absence of dissent.

CHAPTER VI.

ASCERTAINMENT OF A CONTESTED PARTITION.

1. The determination of a doubt regarding the fact of partition having been made is next explained: Sankha ordains: "Should a doubt arise on the subject of partition of the wealth of kindred, the family may give evidence, if the matter be not known to the relations sprung from the same race." "A doubt on the subject of partition of the wealth of kindred" intends, a doubt on the subject of partition of what is liable to be distributed among the kindred, i. e. a doubt regarding the fact of a partition having been made, and a doubt regarding the liability of a particular property to distribution. "The family" i. e. the cognates, and only in their default, a stranger may give evidence.

2. Brihaspati describes a deed of partition: "The brethern who are separated, however, of their own accord, execute an instrument of distribution (at the time of separation): this (instrument) is called the deed of partition."

3. A text of Brihaspati cited in the Vyavaharamatrika declares: "Should a village, a field and a garden qe written in (conveyed by) a single instrument, all these become enjoyed by the possession of a single portion." Instrument signifies a writing and the like.

4. But in the absence of enjoyment of even a single portion, there is a loss of the whole of what forms the subject of sale and the like. This is declared by the same (sage): "Title to immovable property which is freceived at partition or by purchase, or which is ancestral or granted by the king becomes completed

by enjoyment, but is lost through neglect (of enjoyment.) He who enjoys unmolested (the property) as soon as it is received, has his title completed, but loses it, if he neglects." What is received at partition, by purchase and the like, passes to the coparcener, the vendee, and the like, when followed by possession, but loss arises if enjoyment be neglected.

5. Nárada says : "Gift and acceptance of gift, cattle, grain, house, field and attendants must be considered as distinct among separated brethern ; as also diet, religious duties, income and expenditure. Separated and not unseparted brethern may receiprocally bear testimony, become sureties, bestow gifts, and accept presents. Those by whom such matters are publicly transacted with their co-heirs may be known to be separate even without a deed of partition."

6. For the same reason Yájnavalkya says : "Brethern, also husband and wife, likewise father and son cannot, when not separated, bear testimony, become surety or contract debt," i. e. reciprocally.

7. Although there is no partition between husband and wife, and the absence of partition is indicated by Apastamba : "Also in fruits of pure and impure acts' (equal shares) ; also in discussing wife's right, her right is declared to extend during his lifetime to every property belonging to her husband ; also in the Sráddhaviveka it is declared, "that property lies between husband and wife," i. e. belongs to two masters, namely, husband and wife : still husband and wife are enumerated in the above text of Yájnavalkya because it is ordained in the following text of the same sage, that when the father

distributes shares among his sons, he should allot one to a sonless wife : " Should the father make his sons participators of equal shares, he should allot like shares to his wives."

8. " The wife and the son and the slave, these three are incapable of holding property." From the declaration of incapability of holding wealth as in the text, it is argued that the expression of the absence of partition (between husband and wife,) by Apastamba, is to indicate the wife's right to every Vedic ceremoney, she being an indispensable associate.

9. This argument is not tenable. Because in the latter half of the same text which runs as followes: " What they acquire becomes his property, whose they are," is ordained the absence of independence of the wife and the rest, regarding even their self acquired property without the permission of the husband and the like ; also because there is a separate enumeration (of religious acts) in the latter part of the text of Apastamba viz. " Likewise also in the fruits of pure and impure acts."

10. Therefore as the prohibition, namely, " there is no partition between husband and wife" implies the existence of previous partition, consequently the common right of both over the same property is indicated.

11. Otherwise in the absence of the common right of both, partition itself would be unreasonable ; Consequently there would not have been the prohibitory proposition.

12. This is also the meaning of the unity (of husband and wife) declared by Laghuharita: " Because she attains to unity (with her husband) through clarified butter, sacred text, burnt offering and religious observances."

CHAPTER VII.

THE SHARE OF ONE WHO WAS ABSENT AT THE TIME OF PARTITION.

1. Allotment of a share to a relative returning after a long residence abroad is now discussed. On this Brihaspati declares: "If a man leaving what is common to the family, reside in another country, his share must no doubt be given to his male descendants when they return. Be the descendant third or fifth or seventh in degree, he shall receive his hereditary allotment on proof of his birth and name. To the lineal descendants, when they appear, of that man whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen. The enjoyment by strangers for three generations no doubt creates a title. The same is not true of descendants of the same family until the discontinuance of Sapindaship. But a house, a field a shop and the like belonging to a friend, a relative or a kindred, enjoyed by one who is not the owner, are not lost through that enjoyment. A thing enjoyed even for a long time by one related through marriage, by one versed in the Vedas, by the king or his minister does not however become his property."

"Common to the family" signifies property which is common to the family. "strangers" means those that are different from those that are descended from the family.

"One related through marriage" is the son-in-law.

These explanations are found in the Vivadachintamani.

2. Narada says: "That cannot be taken away which has been enjoyed though without title, by the three (ancestors) previous to the father, and which has descended in succession through three generations."

In this text "previous to the father" signifies ancestors beginning with the father, by reason of the text which says: "The fourth shall take."

3. Vyasa distinguishes enjoyment: "When the father, grandfather and greatgrandfather are alive, the enjoyment by them during their joint lives is recognized as that of one generation."

Simultaneous enjoyment though extending to a period of sixty years is not tantamount to an enjoyment of three generations; since as in that case only the great-grandfather is independent, the enjoyment is considered to be his. Then if it be asked what denomination does that enjoyment bear? This is answered by the passage "is considered that of one generation."

4. Vyasa describes what is to be considered as an enjoyment of three generations: "When the great-grandfather enjoys and after him his son, and after them the father, then a person's enjoyment is said to extend to three generations."

5. As to the period to which the enjoyment of each should extend, Vyasa declares: "When the owner enjoys without obstruction for a period of twenty years, that enjoyment is said to extend to one generation; twice that period is called as extending to two generations, thrice that period, extending to three generations. In

such a case the origin of title it is not necessary to enquire."

Here "without obstruction" implies in the presence of the opposite party.

The enjoyment for sixty years is in unison with what is expressed in this text; therefore neglect for a longer period determines the right.

6. Brihaspati too says: "He who purchases land shall, when his right is contested, prove in a court of justice both his title and possession: but his son shall prove only possession, his grandson or any other remote descendant need prove nothing."

7. Yajnavalkya ordains: "He by whom an acquisition of property is made, must when sued, recover the same (by evidence of title;) but neither his son nor grandson (need do the same;) for in their case the enjoyment is the most essential (evidence.)

8. Katyayana describes the enjoyment which is (legally) valid (for the purpose of dispensing with the evidence of title:) "Enjoyment is held to consist of five elements namely, the source of right, long period, the absence of interruption, the absence of adverse claim and the presence of the opposite party."

CHAPTER VIII.

1. The distribution of that, which was concealed at the time of partition, but is afterwards discovered, shall be now taught. On this Katyayana says: "If the father be deceased let the sons meeting together divide, with their brethern, whatever was concealed by any of the co-heirs. Effects which are witheld by them from each other, and property which has been ill distributed, being subsequently discovered shall be distributed in equal shares. (So) Bhrigu (has ordained)."

Because the phrase "subsequently discovered" is inserted in the text, therefore without the discovery by means of human proof, of anything concealed, neither a redistribution may be made nor recourse may be had to divine proof. Otherwise, there cannot be a perfect distribution in any case, if divine proof be not resorted to; since, through the influence of the witch Suspicion, some effects may be deemed to lie somewhere concealed. The phrase "ill distributed" shows redistribution of what has been imperfectly distributed.

2. The following text of Manu, Narada, Brihaspati and Katyayana, refers to a case of perfect distribution: "Only once may a distribution of shares take place, only once may a maiden be given (in marriage) only once may the same article be given (by an owner): these three may occur but once."

3. Likewise the following text of Brihaspati cited in the Ratnakara, namely: "Whatever has been enjoyed by a co-heir as his share shall not be interfered with. Should he, who has signified his assent to a distribution, litigate

again, the king shall adjudge his own share to him, and shall punish him, if he persists in litigation," refers to an optional inequality in the shares, but not to an imperfect distribution caused by error and the like. This is indicated by the insertion, in the text, of the term "assent."

4. From the phrase "subsequently discovered" (§1) it appears that the distribution takes place of that alone (which is subsequently discovered): but what has been once divided need not be distributed again.

5. The phrase "in equal shares" is inserted (§ 1.) with a view to obviate any such argument as that by reason of his concealment, no share or a small share should be allotted to him who witheld.

6. "Bhrigu" (§ 1.) i. e. 'has ordained' to which the accusative is the meaning of the whole sentence.

7. Biswarupa, Halayudha and others offer the following explanation (of the text of Katyayana) namely:—Inasmuch as the distribution of what is subsequently discovered, follows from the very fact of there having been no distribution of it, the text (§ 1.) was intended (by the sage) to show that the offence of theft is not committed in such a case.

8. What they intend is that the import of the verb "to steal" is inapplicable to a case of concealment by a co-heir. Because it is clear from the term "another" in the text of Katyayana which says: "Stealing is defined to be the taking of another's property," that the ownership of another must be exclusive of the

ownership of the taker. As for instance, if the Mudga be unavailable, then the Masha would be the substitute for it: consequently the use of the Masha is prohibited by the text: "The Masha is not fit for sacrifice." Here the prohibition refers to the thing composed of the constituent parts of the Masha alone, but not to that formed of the constituent parts of both the Masha and the Mudga. Similarly, in this case too, theft is committed by the taking of effects belonging to another exclusively, but not by the enjoyment of joint property which is common to himself and the others. Also because, of what is common and what is exclusive, what is exclusive is the sooner understood.

9. Consequently theft is committed by stealing property, distinctly knowing it to belong to another, and not by using another's property mistaking it for his own. This is the opinion of Jinendra and the authors of the Dayabhaga and the Prayaschittavevika.

10. Their assertion, that the appropriation of another's property by mistaking it for his own is not theft appears unsatisfactory, for it is at variance with the following story of Nriga in the Bhagabat:—A cow belonging to a certain eminent priest, strayed into my herd of kine, and being confounded with them was given by me, ignorant of the circumstance, to a man of the sacerdotal order. The owner seeing her led away, claimed her for his own; and the other replied, she was mine by gift, Nriga gave her to me. The priests contending addressed me, setting forth their claims: You are the giver, said the one; the lawless taker, said the other. Hearing this, I was con-

founded. For that sin I was transformed into a lizard since which time I have seen myself, O Lord! in this degraded form.

11. But if many rings belonging to divers persons be mixed together, it is no theft if one sell another's ring by mistake for his own, in consequence of their similarity: for they were placed together under the conviction, that, in the case of many articles which have no discriminative mark, as cowries and the like, belonging to different persons, being intermixed, no offence is committed if they are reciprocally used by a sort of barter: else a person would not do so under the apprehension of offence. But if through dishonesty anything is so placed for profit, then theft is committed.

12. The following passage of the Matsyapurana relates to a case like this: "The man who, through ignorance makes a sale of another man's chattels is faultless; but wilfully doing so he merits punishment as a thief." This text intends that punishment shall not be inflicted upon one who does so through ignorance.

13. Therefore theft is the disposal of property which is the subject of the exclusive right of another person without such person's consent and with the intention, "this is mine, and shall be disposed of according to my pleasure."

14. Sometimes it is mental, consisting of the intention only. In other instances it is corporeal as an actual gift or sale or the like.

15. But such a theft is not possible in the case of the property of the undivided brothers and the like: for then it cannot be distinctly ascertained "this is mine and that is another's."

16. To the same effect is the following text of Katyayana: "Effects which have been stolen by a co-heir, he shall not be compelled by violence to restore. A coparcenar is not liable for the use of any article which belongs to all the undivided kinsmen." Here "stolen" is used metaphorically. He should be persuaded to restore by gentle means but not by violence.—Should an unseparated Kinsman consume a greater portion, he shall not be required to refund the excess.

17. Thus also there is no offence in taking a treasure which is found; for it is a thing of which the owner is lost. So Manu declares: "When the king finds a treasure he shall bestow half of it to Brahmanas. But a learned Brahmana (finding treasure) shall appropriate the whole of it, because he is the lord of all. If treasure is discoverd by any other, the King takes a sixth of it. But a discoverer who gives no information to the king, and is detected, shall be bound to disgorge it to the king and shall moreover be liable to punishment.

18. Such is not the case with associated traders: for no text indicates it. On the contrary, it is directed by the following text of Yajnavalkya, that a fraudulent partner shall be dismissed without profit: "Shall turn out a deceitful (partner) profitless." Traders have not, as in the case of inherited effects, a right vested in several persons with respect to the same chattel. But, by reason of intermixture their right of property in the goods is only uncertain.

CHAPTER IX.

STRIDHANA OR WOMAN'S PROPERTY.

1. Stridhana or woman's property is now described On this Katyayana says: "The wealth which is earned by mechanical arts, or which is received through affection from a stranger, is subject to her husband's dominion; the rest is pronounced to be the woman's property." What is received from a stranger, that is from a person not sprung from the family of her father mother or husband, and what is earned by mechanica. arts are subject to the husband's control. Hence though the goods be hers, they do not constitute woman's pro perty, because she has not independent power over them. But a woman's right is complete in other descriptions, of property, excepting these two; for she has the sole power of gift or other alienation.

2. Manu and Vishnu declare: "The heirs should not divide an ornament worn during her husband's lifetime: they are degraded if they partake of it." Medhatithi explains this text in the following way: An ornament or the like though not given by the husband, but put on with his sanction, becomes the property of the wife by that act alone.

3. Katyayana says: "That which is received by a married woman or a maiden, in the house of her husband or father from her husband or from her parents, is termed the gift of affectionate kindred. The independence of women who have received such gifts is recognised in regard to that property: for it was given by the kindred for their maintenance and to soothe them. The power of women over the gifts of their affectionate kindred is declared

by all the sages, both in respect of donation and sale according to their pleasure." What is obtained from kind relatives of her father, mother or husband is called the gift of affectionate kindred. "To soothe them" that is, out of kindness towards them.

4. Narada says: "What has been given by the affectionate husband to his wife, she may, even while he is dead, consume or give it away according to her pleasure, excepting immovable property." From the adjective "given by the husband," it appears that immovable property other than that given by the husband may of course be given away.

5. Otherwise it would be contradictory to what Katyayana says viz. "According to her pleasure, even in immovables."

6. Katyayana cited in the Kalpataru and Ratnakara declares: "She who is malicious, or shameless, or dissipator of wealth or adulterous is not entitled to woman's property."

7. Yajnavalkya says: "A husband is not, if unwilling, bound to make good the property taken by him at a time of famine, or for the performance of a religious ceremony, or during illness or while under restraint." "Restraint" is, when the creditor and the like (forcibly) obstructs the preparation of food.

8. But (if taken) in any other circumstance, the following rule propounded by Katyayana is to be followed: "Neither the husband, nor the son, nor the father nor the brother are entitled to the appropriation or disposal of woman's property."

CHAPTER X.

SUCCESSION TO WOMAN'S PROPERTY.

1. In the next place succession to woman's property is explained. On this Devala says: "A woman's property is common to her sons and maiden daughters, when she is dead; but if she leave no issue, her husband shall take it, her mother her brother or her father."

2. Here equal right of sons and maiden daughters is indicated by the conjunctive compound (sons and maiden daughters).

3. In default of the one, the property goes to the other.

4. On failure of both of them, the succession devolves, with equal right, on the married daughter who has a son and on her who is likely to have one, for they are capable of conferring spiritual benefits on their mother through the instrumentality of their sons who can present funeral oblations to the manes of their maternal grandfather which are shared by the deceased. This is declared by Satatapa: "The mother partakes of whatever is, after the ceremony of Sapindikarana, presented to the manes of the ancestors."

5. So also Narada says: "On failure of the son the daughter inherits: for she equally continues the lineage."

6. Consequently, on default of daughters of this description, succession devolves on the son's son.

7. On his default the property goes to the daughter's son, since the daughter's son is, in the following text of Manu, declared to be similar to a son's son: "Also the

son of a daughter delivers him in the next world like the son of a son ;" and since it is logically consistent : for the married daughter is debarred from inheritance by the son, therefore the son of the debarred daughter, should be excluded by the son of the person who bars her claim.

8. On his default the son's grandson (succeeds), because he presents oblations which she (the deceased proprietor) partakes of.

9. On failure of these, the barren and the widow daughters succeed to their mother's property ; since they too are her children.

10. On their default the property devolves on the husband.

11. This however does not refer to the property which was given by the parents ; for to that the brother succeeds (in preference to the husband.) To this effect is the following text of the senior Katyayana : " Immovable property which has been given by the parents to their daughter, descends always to her brother, if she die without leaving issue."

12. But to the property received by the mother a the time of her marriage, the maiden and the married daughters succeed notwithstanding the sons, by reason of the text of Vasishtha which says : " Let the females share the nuptial presents of their mother."

13. " A woman's separate property goes to her daughters, maiden and those not actually married.' From this text of Gotama, it follows that the nuptial

presents descend first to the maiden, that is, unaffianced daughters; in their default to those daughters, that are affianced but not actually married: on failure of these they appertain to the married daughters implied by the term "and"; because it is first generally laid down," A woman's property goes to her daughters," but the concluding portion namely "maiden and those not actually married," is intended to shew the order of succession.

14. Manu clearly says: "Property given to the mother on her marriage (yautuka) is exclusively the share of her unmarried daughter." Here the word "yautuka" is derived from the verb "yu" signifying "to unite:" and the union of husband and wife arises from marriage, since this is indicated by the following sacred text (recited at the time of marriage): "What is thy heart, let that become mine, and what is my heart let that become thine." The reading "Yautaka" is equally correct. The latter is adopted by Vachaspatimisra and Rayamukuta.

15. The time of marriage means time, previous and posterior to the actual time of marriage. This is described in the treatise on marriage to begin from the Sraddha for prosperity, and to end with the ceremony of prostrating before the husband.

16. As for the passage of Manu; "The wealth of a woman which has been in any manner given to her by her father, let the Brahmani daughter take: or let it belong to her offspring;" since the text specifies "given by her father", the meaning must be that property which was given to her by her father, even at any other time

than that of the nuptials shall belong exclusively to her daughter: and the term Brahmani signifies any daughter. Or the text may signify that the Brahmani damsel being daughter of a contemporary wife, shall take the property of the Kshatriya and other wives dying childless, which had been given to them by their fathers. The precept, however, which directs that the property of a childless woman shall go to her surviving husband, does not here take effect.

17. On default of these the son succeeds: since Manu says: "On failure of daughters, the inheritance goes to sons."

18. Similarly also other texts declaring the succession of daughters previous to that of sons refer to this description of woman's property.

19 On failure of sons and the others a woman's nuptial presents go to the husband if the marriage ceremony was of any of the five forms beginning with the Brahma: but if it was of any of the three forms beginning with the Asura, the property appertains to the mother and on her default to the father.

20 As is declared by Manu: "It is admitted that the property of a woman married by the ceremonies called Brahma, Daiva, Arsha, Gandharva and Prajapatya, shall go to her husband, if she die without issue. But her wealth given to her on marriage in the form called Asura or in either of the other two (Rakshasa and Paisacha) is ordained on her death without issue to become the property of her mother and father."

21. Baudhayana declares the order of succession to the property of a maiden : "The wealth of a maiden, let the uterine brothers themselves take : on failure of them it shall belong to the mother : or if she be dead, to the father."

22. Since order is expressed in this text, therefore in the previous text (§ 20 .) "the mother and father" succeed in the order in which they are read, but not jointly agreeably to the conjunctive compound.

23. Brihaspati says :—The mother's sister, the wife of the maternal uncle, the wife of the paternal uncle, the father's sister, the mother-in-law and the wife of an elder brother are pronounced to be similar to the mother. If they have no issue of their body, nor son (of a rival wife) nor daughter's son, nor son of these persons, the sister's son and the rest shall take their property.

24. Both sons and daughters are included by the term "issue of the body :" by "son" is meant the son of a rival wife ; for a passage of law declares : "If among all the wives of the same husband, one brings forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue." Nor is the term "son" meant to be in apposition with "the issue of the body ; " for it would be superfluous, and the sister's son or any other remote heir would have the right of succession, although a son of a contemporary wife be living : "son of these persons" comprise the son's son and the rival wife's son's son, but not the son of a daughter's son ; since he does not present oblations to the manes of her husband, which she partakes of.

25. Here agreeably to what has been said before, the rival wife's son and grandson succeed after the daughter's son and the others. But it should not be asserted that they take on failure of the husband, father and the rest mentioned before; because the husband and the rest have no capacity to present oblations which are enjoyed by the deceased proprietor.

26. Therefore, on failure of these down to the grandson of the rival wife, who are indicated by the term "nor" in the phrase "nor son of these persons;" also on failure of the relatives beginning with the husband and ending in the father, who are mentioned in the following text of Devala: "A woman's property, when she is dead becomes the common inheritance of the sons and the daughters: in default of children, let the husband, mother, brother or father, take," the succession to woman's property devolves on the sister's son, the husband's sister's son, the husband's brother's son, the brother's son, the son-in-law and the husband's younger brother, in preference to the father-in-law, the husband's elder brother and the like. Since there is no other way of reconciling the texts.

27. On this subject, the following text of Manu, in the chapter on Inheritance, declares: "To three ancestors must libation of water be given at their obsequies; for three, is funeral oblation of food ordained; the fourth is the giver of oblations; but the fifth has no concern in them." Yajnavalkya declares: "Among these the giver of oblations is the heir;" and in the text of Brihaspati (§ 23) the sonship of the sister's son and the rest, is indicated by the passage, "are pronounced similar to the mother."

28. The only reason for setting out in the chapter on Inheritance, the capacity of presenting oblations, is to show that the preference as regards succession, depends on the capacity of conferring a greater amount of spiritual benefit, on the deceased proprietor.

29. Satatapa ordains :—A sister's son should present oblations to the manes of his maternal uncle : and a maternal uncle, should perform the funeral obsequies of his sister's son ; also oblations should be presented to the manes of the father-in-law, of the spiritual preceptor, of a friend and the maternal grand-father, likewise of the wives of these persons : this is a settled rule amongst those who are conversant with the Vedas.

30. Agreeably to this text (and for the preceding reason) it must be admitted that the order of succession among those six (sister's son &c.) is regulated by the different degrees of benefit derived from their oblations ; since the order indicated by the sense is of greater weight than the order of reading. Otherwise succession would devolve, last of all, on the younger brother of the husband contrary to the opinion and practice of venerable persons.

31. Therefore first of all,the husband's younger brother succeeds to the property of his elder brother's wife because he is a Sapinda, also because he presents oblations to her and her husband, as well as to those to whom her husband was bound to present.

32. On his default, the sons of the husband's younger and elder brothers succeed, because they are Sapindas,

and because they present oblations to her and her husband as well as to two generations of ancestors to whom her husband was bound to offer oblations.

33. On their default the succession devolves on the sister's son; because though he is not a Sapinda, still he presents oblations to her and to her father and two ancestors, to whom her son would have presented funeral repast.

34. In his absence the husband's sister's son succeeds; because he presents oblations to the three ancestors of her husband, which her husband would have offered, and because he presents oblations to her and her husband. He is postponed to the sister's son; inasmuch as they respectively occupy the places of the husband and the son, and the husband is inferior to the son, it is reasonable that their superiority and inferiority should be similarly determined.

35. On his default a woman's property goes to her brother's son, because he presents oblations to her, to her husband and to her three paternal ancestors to whom her son would have presented oblations.

36. On his default the son-in-law succeeds; because he presents oblations to her and to her husband.

37. The succession devolves in the above order: the passage "sister's son &c." enumerates the heirs but not the order of succession.

38. On failure of these six, the father-in-law or the like succeeds, according to his proximity of Sapindaship.

39. It must not be supposed that the text "mother's sister &c." (§23) is applicable when there is a failure of the Sapindas: for in this enumeration of successors, the husband's younger brother, his son and the son of the husband's eldest brother are included, but the husband's father and eldest brother who are more proximate are omitted.

CHAPTER XI.

SUCCESSION TO THE ESTATE OF ONE WHO LEAVES NO MALE ISSUE.

1. In the next place are determined the heirs to the estate of one, who leaves no male issue.

2. Yajnavalkya says:—The wife and the daughters, also both parents, brothers likewise, and their sons, gentiles, cognates, and pupil, and a fellow-student: on failure of the first among these, the next in order is heir to the estate of one who departed for heaven, leaving no male issue. This rule extends to all classes.

3. Likewise Vishnu says:—The wealth of him, who leaves no male issue, goes to his wife; on failure of her, it devolves on the daughters; if there be none, it belongs to the father; if he be dead, it appertains to the mother; on failure of her, it goes to the brothers; after them it descends to the brother's son; if none exist, it passes to the kinsmen; in their default, it devolves on relations; and for want of all those heirs, the property escheats to the king, excepting the wealth of a Brahmana.

4. In the above text the terms "male issue" indicates sons, grandsons and great-grandsons; because they equally present oblations at funeral obsequies.

5. Accordingly, in a text Baudhayana, after mentioning sons, grandsons and great-grandsons, says, "male issue of the body being left, the property must go to them."

6. That text runs as follows:—The paternal great-grandfather and grandfather, the father, the man himself, his brothers of the whole blood, his son by a woman of the same tribe, his grandson and his great-grandson: all these partaking of undivided oblations are pronounced Sapindas. Those who share divided oblations are called Sakulyas. Male issue of the body being left, the property must go to them. On failure of Sapindas or near kindred, Sakulyas or remote kinsmen are heirs.

7. The meaning of the passage is this:—Since a person (when deceased) partakes of the funeral oblations presented to the three ancestors beginning with the father, as participating in the offerings at obsequies; and since the three descendants present oblations to the deceased; and since he, who, while living, presents an oblation to an ancestor, partakes, while deceased, of oblations presented to the same person, as participating in the offering at obsequies: therefore the middlemost (of the seven) who while living offered food to the manes of ancestors, and when dead, partook of offerings made to them, becomes the object to which the oblations of his descendants were addressed in their lifetime, and shares with them, when they are deceased, the food which must be offered by the

daughter's son and the like. Hence, those ancestors, to whom he presented oblations, and those decendants who present oblations to him, partake of an undivided offering in the form of (*pinda*) food at obsequies. Persons, who do partake of such offerings are Sapindas. But one distant in the fifth degree neither gives an oblation to the fifth in ascent nor shares the offerings presented to his manes. So, the fifth in descent neither gives an oblation to the middle person who is distant from him in the fifth degree, nor partakes of offerings made to him. Therefore three ancestors from the grandfather's grandfather upwards, and three descendants from the grandson's grandson downwards, are denominated Sakulyas, as partaking of divided oblations, inasmuch as they do not participate in the same offerings.

8. It has been before observed, that this relationship of Sapinda (extending no further than the fourth degree) as well as that of Sakulyas, is propounded relatively to inheritance. But relatively to mourning, marriage and the like, those too, that partake of the remnants of oblations, are denominated Sapindas. This has been explained in the Suddhitattwa.

9. Katyayana cited in the Ratnakara, clearly states the order of succession of the son and the like: "If an undivided son dies, his son should be made a sharer of the inheritance. He, who has not received livelihood from his grandfather, shall take his paternal share from his uncle or his son. But only the same share of property belongs to all the brethern (descended from the son.) Likewise also his (grandson's) son shall take. Succession devolves not on a more remote descendant."

10. The meaning of the passage is :—If any one of the brethern ceases to live, then his share should be allotted to his son. If the deceased leaves more sons than one, then his share should be equally distributed to them. Likewise his (grandson's) son shall take. His (great-grandson's) son's share ceases.

11. This however relates to a case in which the sharers dwell together. As Devala declares : "The rule is, that the redistribution of inheritance among unseparated or separated kinsmen who dwell together takes place down to the fourth descendants." The re-distribution, taking place among separated brethern who dwell together or are re-united extends as in the case of unseparated ones to the brother or his son or grandson but excludes the great-grandson who is the fourth in descent.

12. The allotment of shares to those who are even seventh in descent as has been said before, (however,) relates to those that return from a distant place. (Ch. VII.) Consequently no contradiction is incurred.

13. Therefore on failure of descendants down to the great-grandson the widow succeeds to the estate (left by her husband.)

14. As is declared by Katyayana : "The wife may, after the death of her husband, use the estate of her husband according to her pleasure': but shall, while he is alive, preserve it or entrust it to his family. The sonless (widow) keeping unsullied the bed of her husband and persevering in religious observances, shall with

moderation, enjoy (the property of her husband.) After her, his kinsmen shall take." "According to her pleasure," intends, for the purposes of religion.

15. Likewise Vyasa ordains: "O sweetfaced! a woman, who is always assiduous in the performance of religious observances, conveys (to a region of everlasting bliss) both herself and her husband abiding in another world."

16. A text of law cited in the Madanaparijata is as follows: "Whatever is most desirable in the world, and whatever was most liked by the husband should be bestowed on a meritorious man, by a woman desirous of gratifying her (deceased) husband."

17. "Keeping unsullied the bed of her husband" intends, one who knows no other man than the husband. Accordingly, in that part of the Harivansa which treats of religious observances, it is said: "O auspicious Arundhati! of unchaste women, all good acts consisting of gift, fasting and merits, likewise all religious observances are fruitless."

18. Also Brihan-Manu says: "Let the sonless wife, keeping unsullied the bed of her husband and persevering in religious observances offer his oblations and take (his) entire share." The term 'his' which occurs in the phrase "his oblations" is to be construed also with 'share'; and since the term 'his' denotes the husband, therefore the wife takes the entire share i. e. the whole estate appertaining to the husband, and not so much as is sufficient for subsistence.

19. By the term 'wife' *(patni)* is intended, the wife of the same class with the husband; since it is expressed (in several texts) that "the senior wife (takes the wealth.)"

20. The seniority is described by Manu :—"When regenerate men take wives both of their own class and others, the seniority, honor and appartment of those wives must be settled according to the order of their classes."

21. Nárada ordains mere maintenance of wives other than those of the same class :—"Of the brothers if any one departs without issue, or enters into a religious order, let the rest divide his wealth excepting the wives' separate property. Let them allow a maintenance to his wives (*stri*) for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethern may resume that allowance." 'Departs' means, dies.

22. Thus, as there is a distinction between a wife taken from the same class and one who is not so, texts like the following should be interpreted with reference to this distinction :—"Next let brothers of the whole blood or also equal daughters divide the heritage of him who leaves no male issue; or let the existing father or brothers belonging to the same tribe, or the mother, or the wife inherit in their order; but on failure of those, the nearest of the kinsmen succeeds." 'Equal' means, appertaining to the same class : 'Existing' signifies, surviving.

23. In fact, however, the order mentioned in this text is not to be accepted in all cases; since that would be inconsistent with the text cited below, which bases the order of succession on the degree of spiritual benefits, conferred upon the deceased proprietor. Hence it is that the terms 'or' and 'or also' are repeated in the text, on purpose to show that no importance is to be attached to the order.

24. On failure of the wife (*Patni*) the daughters (succeed.) Here by the plural number (§ 2) are included the maiden and the married daughters also the daughter's son.

25. Now the order of succession among the maiden and the married daughters is indicatad by the following text of Parásara: "Let the maiden daughter of one who dies without leaving male issue, take the inheritance; on failure of her the married one."

26. In default of these, the daughters' son (inherits). Because in a text of Manu namely, "Between a son's son and a daughter's son there is no difference in law; since their father and mother both sprung from the body of the same man," the daughter's son is declared to be equivalent to the son's son, consequently as the son's son succeeds on failure of the sons, so the daughter's son inherits in default of the daughters.

27. Accordingly, Vishnu cited by Govindarája, says: "In a family destitute of the sons and the grandsons, the daughter's sons inherit the estate; for the son's son and the daughter's son are alike in the performance of obsequies of the ancestors."

28. If there be no daughter's son, the parents (succeed). Of these, first, the father, and then the mother succeeds agreeably to the text of Vishnu cited before. (§ 3.)

29. In their absence, the brothers (succeed.) Here too, the plural number is used (§ 2) for the purpose of showing that the succession is different according as the brothers are uterine, consanguine and re-united.

30. Hence, of an uterine brother and one born of the step-mother though they are sprung from the same father, the uterine brother alone succeeds, but not the step-brother; because the former presents oblations to six ancestors which the deceased was bound to offer: but the latter offers oblations to the three paternal ancestors only.

31. According to the opinion of some, however, even a step-brother who is re-united equally succeeds to a brother's property, with an uterine brother. But if an uterine brother be re-united he alone takes, and not a step-brother though re-united.

32. On this subject Yáj̃navalkya says:—1. A re-united brother shall keep the share of his re-united co-heir who is deceased; or shall deliver it to his issue. But a uterine brother shall thus retain or deliver the allotment of his uterine brother. 2. A half brother, however, being again associated may take the heritage; not a half brother (who is not re-united): or (a uterine brother) though not associated may obtain the property, and not the son of a different mother, who is re-united.

33. Brihaspati describes a re-united (kinsman) :— "He who being separated dwells again through affection, with the father, brother or uncle is called re-united."

34. Therefore, re-union is the dwelling together through friendship, after separation, of the father and the son, or of the brothers, or of the uncle and the brother's son, as the case may be. One forming re-union is called re-united.

35. When a person, who is thus re-united, dies, his re-united co-heir should allot his share to his issue : on failure of his issue, shall take it himself. (§ 32.)

36. The passage, "But a uterine brother shall thus retain or deliver the allotment of his uterine brother," (§ 32) is to be explained in the same way.

37. On this, a special rule is propounded by Yama : "Undivided immoveable property goes to all (the brothers.) But never should separated immoveable estate be taken by half-brothers." 'All,' that is, all the whole and half brothers. The inference which is deduced from the sense of this text is, that exclusive of immoveable property, everything whether divided or undivided, appertains to the uterine brother alone.

38. Manu clearly says : "Of these (re-united brothers) if the eldest or the youngest or any other be, deprived (of his share) previous to the allotment of shares, or dies, his share is not cancelled." "Previous to the allotment of shares," means, Previous to partition ; be deprived of his share' i. e. by entering into a religious order, and the like.

39. As to who are entitled to that share, the same lawgiver says: "The assembled uterine brothers shall together equally divide the same (share); also brothers who are re-united and sisters born of the same mother."

40. Brihaspati says:—"When separated brothers dwell together through affection, then among these there is no seniority when re-distribution takes place; should any co-heir enter into any religious order or die, his share is not cancelled, but is to be alloted to his uterine brother: if there be any sister she is entitled to a share of it. This is the law (regulating the succession to the property) of one without issue and having neither wife nor father (surviving him.) But if any one of the re-united brethern acquires property by means of science, heroism and the like; two shares should be alloted to him and the rest shall take equal shares.

41. Here, it is to be understood, that the absence of the specific deduction for the eldest among the re-united brothers, refers to the three higher tribes, but as regards the Sudras the absence is absolute.

42. This is declared also by Manu:—"All the sons of the twiceborn who sprung from mothers of the same class, shall, after setting apart the specific deduction for the eldest, divide equally. But a woman of the same class only and not of a different class may become the wife of a Sudra. Those that are born of her become equal sharers, although there may be hundred sons."

43. Kullukabhatta comments on the term 'equal sharers' in the following way:—become only equal participators i. e. shall not allow the deductions for seniority to any one.

44. This is also consonant with reason; since as in the text, "To the eldest is to be allotted the twentieth part, and the best of all chattels, half of that to the middlemost, but a fourth to the youngest," Manu has generally declared the law of deductions, therefore the second half of the latter of the two couplets (§ 42) is declared in order to remove doubts as to whether the term 'twice born' indicates all the tribes, (or stands for what it literally signifies.)

45. Nor can it be argued that the specific deductions hold good even in the case of Sudras inasmuch as the reason, namely, saving from the infernal region of the name of Put, is the same in all cases; because that is not the reason, since specific deductions of the half and the fourth (of what is allotted to the eldest) are declared to be given respectively to the middle one and the youngest, though it cannot be held that they save from the same.

46. Nor can it be argued that as there is a distinction between the specific deductions and the shares, all that is prohibited by the declaration of equal participation, is not the specific deduction, but the unequal distribution among the Sudras, which has been mentioned before, as taking place among those born of mothers of different tribes; because that object would be accomplished by the first half of the last couplet which says: "But a woman of the same class only &c." (§ 42.)

47. Equal participation is ordained by Manu for the purpose of prohibiting specific deductions even amongest the twice born; For he says, after the texts, 'All the sons of the twice born &c.' (§ 2): "But twofold distribution among co-heirs is pronounced: one is in the order

of seniority, and the other an equal participation." Brihaspati reads "is shown" in lieu of "is pronounced."

48. Here, (§ 41) (it is to be understood that) the right of the sisters extends to so much property as is sufficient for her marriage, because it is so declared by the sages as well as the commentators.

49. By reason of the unilateral (Ekasesha) compound the term father in the passage "having neither wife nor father surviving him," (§ 41) indicates both the father and the mother. Because Vishnu (§ 3) and other sages declare the succession of the brother, only on failure of the mother.

50. Now Jimutavahana says:—The text "a reunited (brother) shall keep the share of his reunited coheir" (§ 32) is intended to provide a special rule governed by the circumstance of re-union after separation and applicable to the case where a number of claimants in an equal degree of affinity occurs. Hence, if there be competition between claimants of equal degree whether brothers of the whole blood, or brothers of the half blood, or sons of such brothers, or uncles or the like, the re-united parcenar shall take the heritage: for the text does not specify the particular relation; and all (these relations) were premised in the preceding text (§ 2); and a question arises in regard to all of them. Therefore the text must be considered as not relating exclusively to brothers.

51. But when there are a half brother re-united, and a uterine brother not re-united, and when there are a whole brother and a half brother both re-united; then two questions, arise, which of the two is to succeed in each case.

52. As to the first it is said "A half brother however &c." (§ 32) which signifies ; let a half brother, if re-united, take, but not a half brother merely as such : but a uterine brother though not re-united may take; for the term 'uterine brother' which occurs in the preceding text is also to be construed with this latter proposition. Therefore when there are an unassociated uterine brother and a re-united half brother, they both succeed ; because the equality, of the relation of re-union, and of the status of a whole brother is expressed by the first part of the text.(§ 32.)

53. As to the second, it is ordained "and not the son of a different mother, who is re-united." (§ 32.) The meaning is that when there is a whole brother re-united, the son of a different mother though re-united shall not take, *that is,* the re-united whole brother alone shall succeed ; since though they are equally re-united, still the whole brother as such is preferred.

54. The author of the Dayabhaga, however construes the second couplet of Yajnavalkya (§ 42) in the following way : The meaning of the first half (of that couplet) is, a half brother being re-united shall take the succession, although a whole brother not re-united exists ; but a half brother who is not re-united shall not inherit. The latter half of the text is in answer to the question, Does not the whole brother inherit in that case? Though not re-united, the whole brother (the term is understood) shall take the heritage, and not the son of a different mother who is again associated exclusively ; but it shall be taken and shared by both.

55. The same construction is put upon the passage in the Mitakshara.

56. But the great Doctor Sulapani in his Yajnavalkya-dipakalika reads the passage thus : " But a half brother, being again associated, shall not take the heritage of a half brother;" and offers the following explanatory comments :—A uterine brother though not re-united, shall alone take the heritage, but not a brother born of a rival mother, though re-united. Some explain the term 'associated' (occurring in the last part of Yajnavalkya's text § 32) to mean one associated through the uterus that is, a whole brother. If the reading be, " one born of a different mother shall not take the heritage," then the meaning would be, that one being a half brother shall not take the succession. This text shows the succession of a whole brother who is not re-united. Consequently there is no tautology.

57. The authors of the Ratnakara and others say that the reading which is found in the Kalpataru is " shall not take the heritage of a half brother," but this seems to be an error committed by the copyist. Since the reading in the original text of Yajnavalkya and in such treatises as the Mitakshara, the Parijata and the Halayudha, is " A half brother shall not take the heritage;" and the commentaries on that text are in accordance with this reading.

58. If there be no brothers, the brother's son succeeds. But first of all, the son of a whole brother takes the succession, because the property being devolved on

him, conduces to greater (spiritual) benefit; inasmuch as the mother of the (deceased) proprietor partakes of the oblations which the whole brother's son presents to his grand-father. As is declared by Brihaspati: "The mother tastes with her husband the oblation consisting of food which is reverentially offered (to his manes), and the grandmother with her husband, as also the great-grandmother with her husband."

59. In default of the son of a uterine brother, the son of a half brother succeeds.

60. On failure of him, the 'gentiles' succeed. (§ 2.)

61. For Manu declares: "To three must libations of water be made, to three must oblations of food be presented; the fourth in descent is the giver of these offerings; but the fifth has no concern in them. The inheritance is his who is unremote of kinsmen of him." The gloss of Kullukabhatta on the latter part is to the following effect: The inheritance is his who is unremote i. e. nearest, 'of the kinsmen' i. e. from among the kinsmen 'of him' i. e. of the deceased proprietor.

62. Also because Brihaspati says: "When there are many gentiles, distant kinsmen as well as cognates, he who among these is the nearest, succeeds to the estate of one who leaves no children."

63. Therefore a successor to the inheritance is to be determined with reference to two considerations, namely, his relation as regards the offering of oblations, and his proximity of birth.

64. Accordingly, as on failure of the deceased proprietor's lineage including the daughter's son, others succeed, similarly in default of the brother's son, the father's lineage ending with his daughter's son takes the heritage.

65. In their default the grand-father, succeeds.

66. On failure of him, the grand-mother inherits. Since Manu ordains: "The mother receives the inheritance of her son destitute of issue; and when the mother too is dead, the father's mother takes the property." Therefore as the mother succeeds on failure of the father, similarly the paternal grandmother is the heir in default of the paternal grandfather.

67. When she is no more, the descendants of the paternal grandfather inclusive of his daughter's son, succeeds (in the same order), as has been shewn with regard to the father's issue.

68. On the same principle, the paternal great-grandfather, the paternal great-grandmother, and the descendants of the paternal great-grandfather inclusive of his daughter's son (succeed in the prescribed order.)

69. On failure of all those who presents oblations, partaken of, by the deceased (proprietor,) the 'cognates,' such as the maternal grandfather, the maternal uncle and the like,—(are entitled to the inheritance.)

70. Among these too, if the maternal grandfather survive, he alone succeeds in the same way as the father and the like.

71. If he be dead, then the maternal uncle and the like become heirs, since they present oblations to the maternal grandfather and the like, which the deceased (proprietor) was bound to offer.

72. On their default the 'Sakulyas' or the kinsmen of divided oblations become heirs. They consist of the three generations of descendants, beginning with the great-grandson's son, and also of the descendants of the paternal great-grandfather's father and the like.

73. It is in pursuance of the same principle (§ 63) that the author of the Dayabhaga says :—since the paternal uncle, like the son of the whole brother, offers oblations, which the owner was bound to present, to two ancestors, should not the succession devolve equally on the paternal uncle and the nephew of the proprietor. The answer is, the paternal uncle is indeed the giver of oblations to the paternal grandfather and great-grandfather of the proprietor ; but the nephew is the giver of oblations to two ancestors including the owner's father who is principally considered. He is therefore a preferable claimant, and inherits before the paternal uncle.

74. Likewise when there is a paternal uncle, and a son of a deceased paternal uncle, of the deceased; in such a case although there is no distinction as to the presenting of oblations, which the deceased was bound to offer, to the paternal grandfather and great-grandfather, still the paternal uncle inherits by reason of his proximity of birth.

75. Because the allotment of shares according to the proximity of birth is set forth in the following text :

"Among the sons of different fathers, the allotment of shares is according to the fathers."

76. Accordingly it is said in the Mitakshara that the paternal grandfather, the paternal uncle and his son, take the succession in their order.

77. Also in Vivadachintamani it is stated regarding succession to the property of one who leaves no male issue, that on default of the brother, his son (succeeds), on failure of him the nearest kinsman (inherits.)

78. The term 'cognates' in the text of Brihaspati (§ 62) shows that the cognates of the owner, his father and his mother are, in the prescribed order, entitled to inheritance. They are:—"The father's sister's son, the mother's sister's son, and the maternal uncle's son are considered to be the cognates of the owner. The father's father's sister's son, the father's mother's sister's son and the father's maternal uncle's son, are known as the cognates of the father. And the mother's cognates are her mother's sister's son, her father's sister's son and her maternal uncle's son."

79. Apastamba says: "Either the disciples or the daughter shall use the property for religious acts in his welfare." 'For religious acts in his welfare,' signifies, for religious acts such as the monthly oblations and the like which are enjoyed by him, that is to say, for his spiritual benefit.

80. Thus also when there is a possibility of the destruction of his property, although there may be heirs to

his property in distant places, still any one may apply the property of the deceased to the purpose of his funeral obsequies as well as to the purpose of his religious merit.

81. Because in the following text of Narada, it is said that even a priest may become a substitute (of the heir.) " Even he who out of affection, acts, of his own accord, as a priest ;" This is explained at length in the Suddhitattwa.

82. This is admitted by the author of the Dayabhaga when he says : "The appropriation of the wealth of the deceased to his spiritual benefit, in the mode which has been stated, should be in every case, contemplated.

83. Thus in The Principles of Law composed by the fortunate Raghunandana Bhattacharjya the son of the great Doctor the fortunate Harihara Bhattacharjya, The Principles of Heritage is finished.

END.

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